

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

11 SECURITIES AND EXCHANGE) Case No. 5:12-cv-03237-EJD-PSG
12 COMMISSION,)
13 Plaintiff,) **ORDER DENYING MOTION FOR**
14 v.) **EVIDENTIARY SANCTIONS**
15 SMALL BUSINESS CAPITAL CORP., et al.,)
16 Defendants.) **(Re: Docket No. 910)**

17 Before the court is Defendant Mark Feathers motion for evidentiary sanctions in this case.¹

18 After considering the arguments,² the court DENIES Feathers' motion.

19 Feather's motion is predicated on SEC counsel John Bulgozdy's statement in court that
20 "And I personally have seen an e-mail that Mr. Feathers had sent to investors saying that the
21 portfolio would be sold at a huge loss."³ Feather's believes sanctions are warranted pursuant to
22 Fed. R. Civ. P. 11(b) and the court's inherent power to punish bad faith conduct by litigants.

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25 ¹ See Docket No. 910.

26 ² The court finds the motion suitable for disposition on the papers. *See* Civil L.R. 7-1(b) ("In the
27 Judge's discretion, or upon request by counsel and with the Judge's approval, a motion may be
determined without oral argument or by telephone conference call.").

28 ³ *See* Docket No. 910 at 1-2.

1 Because the court's review of the record does not disclose bad faith by Bulgodzy, sanctions
 2 are not warranted.⁴ The SEC's opposition points to a document e-mailed to the SEC where
 3 Feathers wrote to investors that they should be "very concerned about this assets sale because the
 4 receiver is allowed to accept a bid well below market value for those assets" and referred to this as
 5 a "potential loss."⁵ Bulgodzy received that e-mail March 18, 2014 – prior to the
 6 hearing-in-dispute. Bulgodzy thus had a good faith basis for the statement made to the court at oral
 7 argument. Sanctions are not warranted.
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9 **IT IS SO ORDERED.**

10 Dated: June 18, 2014

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 12 PAUL S. GREWAL
 13 United States Magistrate Judge

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 18 ⁴ On its face – and as explained by the Ninth Circuit – Fed. R. Civ. P. 11 "applies to signed
 19 writings filed with the court." *Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir. 2001); *see also* Fed. R.
 20 Civ. P. 11(b)

21 By presenting to the court *a pleading, written motion*, or other *paper*--whether by
 22 signing, filing, submitting, or later advocating it--an attorney or unrepresented party
 23 certifies that to the best of the person's knowledge, information, and belief, formed after an
 24 inquiry reasonable under the circumstances:

- 25 (1) it is not being presented for any improper purpose, such as to harass, cause
 26 unnecessary delay, or needlessly increase the cost of litigation;
- 27 (2) the claims, defenses, and other legal contentions are warranted by existing law
 28 or by a nonfrivolous argument for extending, modifying, or reversing existing law
 29 or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified,
 will likely have evidentiary support after a reasonable opportunity for further
 investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if
 specifically so identified, are reasonably based on belief or a lack of information.
 (emphasis added).

30 ⁵ See Docket No. 913-1, Ex. 1.